

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING, HISTORIC PRESERVATION OFFICE
1100 4th STREET S.W., SUITE E650
WASHINGTON, D.C. 20024**

In the Matter of:

**Application of the District of Columbia
Water and Sewer Authority for Construction
of a Water Tower on the East Campus of
St. Elizabeths Hospital**

HPA No. 10-166

SUMMARY ORDER

This matter came before Harriet Tregoning, Mayor's Agent for Historic Preservation (“Mayor's Agent”), at a properly noticed public hearing on June 18, 2010, for preliminary review of an application from the District of Columbia Water and Sewer Authority (“WASA” or “Applicant”) to construct a water storage tower (“Water Tower”). The Water Tower would be located on the East Campus of St. Elizabeths Hospital, which campus is a National Historic Landmark and is on the D.C. Inventory of Historic Sites.

Pursuant to Section 9 of the Historic Landmark and Historic District Protection Act of 1978 (the “Act”) (D.C. Official Code § 6-1108), an applicant may apply to the Mayor's Agent for a preliminary review of a project for compliance with provisions of the Act related to new construction. Such an application may be considered by the Mayor "without the necessity of the applicant completing other permit requirements not necessary for a finding” under the Act (D.C. Official Code § 6-1108(a)). In this case, WASA is claiming that compliance can be found because the project is one of “special merit.” “Special merit” is defined as “a plan or building having significant benefits to the District of Columbia or to the community by virtue of

exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services” (D.C. Official Code § 6-1102(11)).

The Applicant relies solely upon the third element of the definition - social or other benefits having a high priority for community use - to meet its burden of proof.

Based on the substantial evidence in the entire record of this proceeding, including all written and oral testimony submitted prior to and at the public hearing, the Mayor's Agent has determined that the Applicant has met its burden of proof. An upgrade of the existing water service, including the new storage facility, is needed to address poor water pressure, improve fire protection, maintain existing water quality, and support future development in the area. This proposed Water Tower is a critical element of this upgrade.

Issues and concerns of affected Advisory Neighborhood Commission

The Mayor's Agent is required by Section 13 of the Comprehensive Advisory Neighborhood Commissions Act of 1975 (D.C. Code § 1-309.10) to give “great weight” to the issues and concerns of the affected Advisory Neighborhood Commission expressed in its written report (“ANC”). No report was received from ANC 8C (the ANC within which the property is located).

Consideration of the Historic Preservation Review Board recommendation

Prior to a preliminary review by the Mayor's Agent, the Act requires a referral of the application to the Historic Preservation Review Board (the "HPRB") for its nonbinding recommendation. Accordingly, on February 25, 2010 the preliminary application for construction of the Water Tower was on the HPRB's consent agenda. The HPRB, which had already undertaken a conceptual review of the project, found that the application was incompatible with the character of the historic district. However, being aware that the application could qualify as a project of special merit, the HPRB voted to "refer" the application to the Mayor's Agent for a hearing.

Waiver of Height Act

The Department of Consumer and Regulatory Affairs (DCRA) has approved, subject to conditions, a waiver from the height limitation imposed by Section 5 of the Height of Buildings Act of 1910 (D.C. Official Code § 6-601.05) to accommodate the Water Tower.

Zoning

Pursuant to a text amendment to the Zoning Regulations, the Zoning Commission for the District of Columbia authorized the establishment of a water tower owned and operated by WASA on unzoned land owned by the District and located on the East Campus of St. Elizabeths Hospital. The text amendment also required that any water tower that exceeds 90 feet in height be reviewed and approved by the Zoning Commission prior to the issuance of a building permit. On May 10, 2010, the Zoning Commission approved Water Tower design options, with some design flexibility, in accordance with the adopted text amendment.

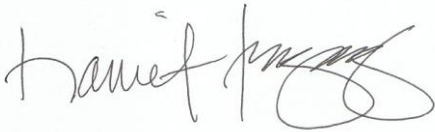
The record in this matter was held open pending publication of the order from the Zoning Commission, as zoning approval is required for Mayor's Agent preliminary review pursuant to 10 DCMR § 302.3. Publication of the order to the D.C. Register occurred on June 25, 2010.

Waiver of Rule

The Mayor's Agent has waived the requirement of 10A DCMR § 410.1 that findings of fact and conclusions of law accompany the final written order. As provided in 10A DCMR § 3207.3, the "Mayor's Agent, SHPO [State Historic Preservation Officer], and Review Board may, for good cause shown, waive any of the provisions of these rules pertaining to their respective authorities, if in their judgment the waiver will not prejudice the rights of any person and is not otherwise prohibited by law." There were no parties in opposition to this application and therefore findings of fact and conclusions of law are not required by Section 10 of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-509. The use of a summary order will not prejudice the Applicant, but in fact will expedite its proposed project.

ACCORDINGLY, the Mayor's Agent hereby issues a preliminary finding of compliance with the Act for construction on the East Campus of St. Elizabeths Hospital of the water storage tower described in the record of HPA No. 10-166.

Pursuant D.C. Official Code § 6-1108 no permit shall be granted except in accordance with all other permit requirements, and after final review by the Mayor under the Act. If the final review shows that the project is not consistent with this preliminary review, the application will again be processed in accordance with the procedures and requirements of D.C. Official Code § 6-1107.

A handwritten signature in black ink, appearing to read "Harriet Tregoning", with a stylized flourish at the end.

HARRIET TREGONING
Mayor's Agent for Historic Preservation

August 5, 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Decision and Order was served this 5th day of August, 2010 by mailing a copy of the same via electronic mail or first class United States Postal Service mail, postage prepaid, to the following:

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